

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 Adv. Case No. 22-01139-mg

5 - - - - - x

6 In the Matter of:

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8 CELSIUS NETWORK LLC,

9

10 Debtor.

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,

13 Plaintiffs,

14 v.

15 STONE et al.,

16 Defendants.

17 - - - - - x

18 United States Bankruptcy Court

19 One Bowling Green

20 New York, NY 10004

21

22 December 20, 2022

23 8:58 AM

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1 B E F O R E :

2 HON MARTIN GLENN

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: F. FERGUSON

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1 HEARING re Adversary proceeding: 22-01139-mg Celsius Network  
2 Limited et al v. Stone et al  
3 Hearing Using Zoom for Government  
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5 HEARING re Adversary proceeding: 22-01139-mg Celsius Network  
6 Limited et al v. Stone et al  
7 Hearing Using Zoom for Government RE: Objection to Notice of  
8 Presentment RE: Application to Employ Ernest & Young LLP as  
9 Tax Compliance and Tax Advisory Services Provider. (Doc ##  
10 1404, 1585)  
11

12 Hearing Using Zoom for Government RE: Motion for the  
13 Appointment of a Chapter 11 Mediator Filed by Immanuel Mr.  
14 Herrmann. (Doc## 1630, 1680, 1722, 1723, 1726, 1730, 1738,  
15 1739, 1742, 1743, 1750)  
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1 P R O C E E D I N G S

2 CLERK: All right. Good morning. Starting the  
3 recording for December 20, 2022 at 9:00 AM. Calling Celsius  
4 Network Limited v. Stone et al, Case Number 22-1139.

5 Mr. Roche, maybe we could start with you?

6 MR. ROCHE: Yes, this is Kyle Roche on behalf of  
7 Defendants Jason Stone and KeyFi Inc.

8 CLERK: Okay, thank you. And then Mr. Stanley, I  
9 have you as listen only. Is that correct?

10 MR. STANLEY: That's correct.

11 CLERK: Okay. Thank you. Mr. Chapman, if you  
12 could unmute and give your appearance, please?

13 MR. CHAPMAN: Good morning. Dean Chapman, Akin  
14 Gump Strauss Hauer Feld, for the Plaintiffs, the Celsius  
15 Plaintiffs.

16 CLERK: Okay. Is Mr. Hurley going to be joining  
17 as well?

18 MR. CHAPMAN: Yes, he will be.

19 CLERK: Okay. Thank you. Everyone in the waiting  
20 room looks like they're here for the 10:00, so... Unless,  
21 (indiscernible), are you saying something -- am I missing  
22 anyone?

23 MAN 1: No, other than Mr. Hurley, I don't believe  
24 so.

25 CLERK: All right. Please pause the recording.

1 All right. Mr. Hurley, if you could unmute and give your  
2 appearance please?

3 MR. HURLEY: Good morning. Mitchel Hurley, with  
4 Akin Gump Strauss Hauer & Feld, special litigation counsel  
5 for the Plaintiffs -- the Plaintiff Celsius Defendants,  
6 Debtors.

7 CLERK: Thank you. Is Mr. Schneider -- I have him  
8 on my list. Is he supposed to be joining? I see a David  
9 Schneider with a speaking role.

10 MR. HURLEY: I don't recognize that name.

11 CLERK: Okay. All right. I also have -- and  
12 everyone else is listen only. Judge, would you like to get  
13 started?

14 THE COURT: Yes, I would, Deanna. All right.  
15 Good morning. This is Judge Glenn. Mr. Hurley, are you  
16 going to begin?

17 MR. HURLEY: Yes, Your Honor. First of all,  
18 thanks for the time this morning on short notice. We  
19 appreciate it. I was thinking I should begin with a brief  
20 update on the status of the preliminary injunction motion  
21 and discovery.

22 So, during the November 23rd status conference,  
23 Your Honor set a hearing date of January 11th and 12th, if  
24 necessary, and a cutoff for preliminary injunction discovery  
25 of December 22.

1 Connor Nolan, who is the witness that was  
2 identified by Mr. Roche during the November 23rd conference  
3 is going to be deposed tomorrow, December 20th. Jason Stone  
4 is going to be deposed on December 21st.

5 After the conference on the 23rd, the parties met  
6 and conferred and we also agreed to exchange some expedited  
7 document discovery in advance of the depositions. So, five  
8 days ago, Celsius produced documents returned by search  
9 terms that we negotiated with the Defendants. Again, it's  
10 documents that were then in our possession, custody or  
11 control and of which Connor Nolan is the custodian. Stone  
12 produced certain documents over the weekend.

13 We agreed on two stipulations, which the Court  
14 entered last week, and thank you again for that.

15 THE COURT: I have them in front of me in case we  
16 needed them. Go ahead.

17 MR. HURLEY: Sorry. One of them governing the PI  
18 definitions themselves and the other providing some of the  
19 relief requested in the motion, but leaving other relief for  
20 determination by the Court in January.

21 Okay. So that pretty much brings us up-to-date.  
22 Let me come to the issue that we wanted to raise with Your  
23 Honor, and there's another issue we really kind of wanted to  
24 preview.

25 So we asked for your time this morning to resolve

1 the dispute we are having about whether a particular witness  
2 should be allowed to be called at the hearing. So, in  
3 particular, Celsius is asking the Court to preclude the  
4 Defendants from calling at the hearing a witness named  
5 Richard Ma, whom the Defendants first identified on Friday,  
6 December 14, 2022.

7 Richard Ma is the owner and manufacturer of a  
8 company called Quantstamp. It's a company that Celsius paid  
9 to create a so-called wormhole program that was supposed to  
10 track the Defendants' deployment activities, but that wasn't  
11 delivered.

12 When the Defendant's identified Mr. Ma on December  
13 14th, they said that they wanted to call him supposedly to  
14 rebut the Alex Mashinsky declaration that was submitted with  
15 Celsius' December 2nd reply. We think there are a number of  
16 reasons, though, why it would be unfair and inappropriate to  
17 allow the Defendants to introduce this new witness at this  
18 late stage.

19 So, first, it isn't true rebuttal testimony. The  
20 only thing that Mashinsky did in his December 2nd  
21 declaration was deny a claim that was made by Stone for the  
22 first time in the Defendants' November 28th opposition  
23 papers. So, specifically, in his November 28th declaration,  
24 Stone claimed that Mashinsky authorized him to buy NFTs with  
25 Celsius assets and transfer them to Defendants as an advance

1 on profit share.

2 In his December 2nd declaration, which contains  
3 just two very short substantive paragraphs, Mashinsky just  
4 denies Stone's November 28th claim. So any Ma testimony to  
5 rebut Mashinsky would just consist of cumulative testimony  
6 supporting the claim that Stone already made on November  
7 28th.

8 And we submit if Defendants wish to include  
9 additional evidence in support of what we understand to be  
10 their primary and maybe only defense, this authorization  
11 defense, they should've done so in connection with the  
12 November 28th opposition. They didn't. And in fact, they  
13 didn't so much as mention Richard Ma or his company  
14 Quantstamp anywhere in their opposition papers.

15 We also think it's just too late. So, even if  
16 this were actual rebuttal testimony, Defendants have had the  
17 very short Mashinsky declaration for more than two weeks  
18 now, since December 2nd. Again, they didn't identify Ma as  
19 a potential witness until last Friday morning. That just  
20 left four business days before the end of the discovery  
21 period that the Court set on November 23rd. And two of  
22 those days are already consumed with prescheduled  
23 depositions.

24 Defendants' interest in Ma was also unknown to  
25 Celsius at the time that we negotiated the expedited

1 document discovery I mentioned before. Had we known he  
2 would be a witness, Celsius certainly would've sought  
3 related documents on an expedited basis from the Defendants  
4 in advance of the depositions.

5 And that brings us to another issue I think is  
6 important for the Court to be aware of, Your Honor, which is  
7 that Richard Ma and his company Quantstamp have been ducking  
8 Celsius discovery for over a month now. So Celsius actually  
9 served a subpoena on Quantstamp more than a month ago that  
10 was returnable weeks ago, and Quantstamp just ignored the  
11 subpoena.

12 We then emailed to executives of Quantstamp,  
13 including Mr. Ma, and directly asked if and when we could  
14 expect a response to our subpoena. And they ignored our  
15 emails as well. And so now, out of nowhere, the Defendants  
16 want Ma to act as a witness at an important stage of the  
17 proceedings, and we think it just isn't fair and shouldn't  
18 be allowed. If --

19 THE COURT: May I ask, Mr. Hurley, was Mr. Ma  
20 served with a subpoena by you? Was the subpoena served?

21 MR. HURLEY: The subpoena was served on  
22 Quantstamp, his company. And this was -- I think Mr.  
23 Chapman may have the date in front of him. I actually do  
24 not. Dean, when did we serve that subpoena?

25 MR. CHAPMAN: November 2nd.



1 MR. HURLEY: November 2nd. We followed up with an  
2 email directly to Mr. Ma, because no one responded to the  
3 Quantstamp subpoena, and he ignored our email.

4 THE COURT: Where is he located?

5 MR. HURLEY: Well, that's another issue is that  
6 when we got the identification of Ma on Friday, we said,  
7 look, we object to this, but give us some information.  
8 Provide us with a declaration that you want to submit from  
9 him. We'll consider it. And you need to give us his  
10 address at a bare minimum so that we can serve a subpoena.  
11 And the Defendants have not given us either the declaration  
12 or his address. So we don't know his physical mailing  
13 address.

14 THE COURT: Where did you serve the subpoena on  
15 Quantstamp?

16 MR. HURLEY: Dean?

17 MR. CHAPMAN: We served a registered agent. Let  
18 me -- I can try to quickly pull the affidavit of service --

19 THE COURT: You just have to identify yourself  
20 every time you speak, Mr. Chapman. Go ahead.

21 MR. CHAPMAN: Yeah, Dean Chapman, Akin Gump. Let  
22 me check the affidavit of service.

23 THE COURT: Okay.

24 MR. HURLEY: So, just to sum up, Your Honor, our  
25 view is he shouldn't be permitted at the hearing at all.

1 It's too late. It's cumulative. But if he is, at a  
2 minimum, in our view anyway, this is really like trial by  
3 ambush, and we'd need to have information in advance and an  
4 opportunity to depose him and potentially take some document  
5 discovery as well.

6 THE COURT: Let me ask you a further question.  
7 What did you ask for in the subpoena that you served?

8 MR. HURLEY: The subpoena, I don't have at my  
9 fingertips, but it was related to Quantstamp's role in  
10 preparing this so-called wormhole that had been promised.  
11 It was supposed to track the activities of Mr. Stone so that  
12 Celsius would know basically what he was doing and would be  
13 able to have a better idea on their own terms of his  
14 performance. But it wasn't delivered, so --

15 THE COURT: You obviously thought that he might  
16 have -- he and his company would have relevant information  
17 in this adversary proceeding if you served a discovery  
18 request, a subpoena for discovery. Isn't that true?

19 MR. HURLEY: We did. Not necessarily with respect  
20 to the preliminary injunction motion, Your Honor. We didn't  
21 speak expedition in connection with the motion or anything  
22 like that. But certainly, Mr. Maw and Quantstamp are  
23 parties that were involved in the wormhole process, which we  
24 think is ultimately going to be relevant. But we had no --  
25 we ourselves didn't think it was going to be particularly

1 relevant to the preliminary injunction motion. And of  
2 course, the Defendants didn't say anything about it until  
3 Friday.

4 THE COURT: So, with respect to the subpoena, when  
5 was the response to the subpoena due?

6 MR. CHAPMAN: The response -- for the record, Dean  
7 Chapman, Akin Gump. The response to the subpoena was due  
8 November 28th. It was served on Quantstamp's registered  
9 agent, Capital Services in Albay, New York.

10 THE COURT: Where is the company based? Do you  
11 know?

12 MR. CHAPMAN: We don't know. I can say Richard  
13 Ma's LinkedIn would indicate San Francisco. But that's as  
14 far as we know.

15 MR. ROCHE: All right. Your Honor, may I respond  
16 to --

17 THE COURT: Yeah, I just want to -- I want to make  
18 sure -- anything else, Mr. Hurley, before I call on Mr.  
19 Roche?

20 MR. HURLEY: No, Your Honor. There's another  
21 issue we want to preview, but I'm happy to have Mr. Roche  
22 respond, of course, to what we just presented.

23 THE COURT: Go ahead, Mr. Roche.

24 MR. ROCHE: Good morning, Your Honor. Kyle Roche,  
25 for Defendants KeyFi and Jason Stone. I wanted to start by

1 just going to the relevant timeline quickly. November 15th,  
2 Plaintiffs filed their preliminary injunction. In support  
3 of that preliminary injunction they offered three  
4 affidavits. None of those three affidavits stated that the  
5 transactions at issue here, particularly the NFTs, were  
6 unauthorized transactions.

7 So, at the time we received the preliminary  
8 injunction order and what we were responding on November  
9 28th, we were responding to those three affidavits. I don't  
10 have them in front of me, but I believe by recollection it's  
11 affidavits of Patrick Holert, Mr. Sabo and Kleiderman, Mr.  
12 Kleiderman, were the three affidavits that supported the  
13 initial motion for injunction.

14 So, when we submitted our affidavit from Mr. Stone  
15 in response on November 28th, in that affidavit Mr. Stone  
16 explained that the NFT purchases and the subsequent  
17 transfers were authorized by Alex Mashinsky, Celsius' then  
18 CEO.

19 Contrary to what Plaintiffs just stated, they've  
20 known that that was our position for over a year now. It  
21 was -- in addition to it being our position from documents  
22 and from discussions pre-litigation, it was asserted in the  
23 New York Supreme action. So they've known that it was our  
24 position that those transactions were authorized by Mr.  
25 Mashinsky himself prior to Mr. Stone and KeyFi's departure

1 from Celsius.

2 And so at the time when we submitted our November  
3 28th brief, we believed that that testimony was going to be  
4 unrebutted because the three affidavits that were submitted  
5 on November 15th did not rebut the position that those  
6 transactions were authorized as an advance on the profit  
7 share.

8 On December 5th -- so I believe Mr. Hurley said  
9 the affidavit for Mr. Mashinsky was December 2nd -- I  
10 believe it was December 5th. Mr. Mashinsky submitted for  
11 the first time in this litigation an affidavit claiming that  
12 those -- with no supporting documents -- and I think it was  
13 a two-paragraph declaration -- stating that those  
14 transactions were not authorized and that they were not an  
15 advance on the profit share.

16 At that point in time, we identified with working  
17 with KeyFi and Mr. Stone other witnesses who could  
18 cooperate, because at this point it was going to be a  
19 contested fact for the preliminary injunction hearing, the  
20 question of whether or not those transactions, the NFTs at  
21 issue in this underlying litigation, were authorized at the  
22 time that KeyFi and Mr. Stone made those purchases.

23 We worked with Mr. Stone to identify other third-  
24 party disinterested witnesses who would have information  
25 relevant to these transactions. And at that point in time,

1 we identified Mr. Ma. We contacted Mr. Ma last week. I  
2 spoke with him last week and we -- and had a meet and  
3 confer, I believe, Friday morning. I told Mr. Hurley that  
4 we at that point in time we intended to call Mr. Ma and that  
5 we would work with them to both provide a declaration to the  
6 extent we could facilitate it, and to the extent we could  
7 help facilitate a deposition, we would.

8 Finally, I am not -- I don't control Mr. Ma. I  
9 understand he's based in Toronto, Canada. And I think  
10 that's where he most of the time resides and runs his  
11 company out of. And they have employees all over the place.  
12 I think they have over 70 employees. But I understand that  
13 Mr. Ma is headquartered, he himself, in Toronto.

14 While we don't have control over Quantstamp, we're  
15 happy to try to facilitate whatever discovery we can ahead  
16 of the January 11th hearing. But Celsius' position that we  
17 should be precluded from calling Mr. Ma, to rebut Mr.  
18 Mashinsky, is patently unfair. Celsius --

19 THE COURT: Were you aware that Celsius previously  
20 served a subpoena on Quantstamp?

21 MR. ROCHE: I was aware, yes.

22 THE COURT: And were you aware that Ma and  
23 Quantstamp never responded?

24 MR. ROCHE: I was not aware that. And I  
25 understand -- I understand from Mr. Ma that he's represented

1 by Quinn Emanuel. And my -- I understand that Quinn Emanuel  
2 did respond. I was not on those communications. And if  
3 Akin -- if Mr. Hurley and Dean say that they haven't  
4 responded yet, I'd take them at their word. But it was my  
5 understanding that Quinn Emanuel did respond to the subpoena  
6 from --

7 THE COURT: Mr. Hurley, Mr. Chapman, did Quinn  
8 Emanuel respond or communicate with you about the subpoena?

9 MR. HURLEY: I certainly didn't receive any  
10 communication from Quinn Emanuel about the subpoena.

11 THE COURT: Mr. Chapman?

12 MR. CHAPMAN: No, Your Honor.

13 THE COURT: No communication whatsoever Quinn  
14 Emanuel indicating it was representing Quantstamp? Is that  
15 correct?

16 MR. HURLEY: Correct, Your Honor.

17 MR. CHAPMAN: Correct, Your Honor.

18 THE COURT: All right.

19 MR. ROCHE: Then I --

20 THE COURT: Mr. --

21 MR. ROCHE: I understand from Mr. Ma he is  
22 represented by Quinn Emmanuel.

23 THE COURT: Mr. Roche --

24 MR. ROCHE: Yes.

25 THE COURT: I had previously asked who you

1 intended to call his witness at the hearing and Ma was not -  
2 - was never mentioned.

3 MR. ROCHE: Yes, Your Honor, because at that time  
4 we did not believe we were responding to an affidavit that  
5 was put in by Mr. Mashinsky on December 5th. And at that --

6 THE COURT: Were you planning to call Mr. Maw live  
7 at the hearing?

8 MR. ROCHE: Now we are. As of today, we are  
9 planning on calling Mr. Maw live at the hearing.

10 THE COURT: And he --

11 MR. ROCHE: And we understand from him, at least  
12 what he represented to me last week, that he was willing to  
13 fly to New York to testify live.

14 THE COURT: Well, let me simplify this, okay?  
15 Unless Mr. Maw makes himself available for a deposition by  
16 noon on Thursday of this week, I'm precluding any testimony  
17 from Ma at the trial, at the hearing. I accept the  
18 statements of the Akin Gump lawyers that they previously  
19 served a subpoena on Quantstamp and that response was due on  
20 November 28th. They've gotten no response. Unless he is  
21 available for deposition by noon on Thursday of this week by  
22 them, he will not be permitted to testify at the hearing.  
23 If he submits to a four-hour deposition to be completed by  
24 noon on Thursday, I will permit him to testify at the  
25 preliminary injunction hearing. Otherwise, I will not.



1           This has the characteristics of a sandbag and I'm  
2           not going to initially preclude you from calling him as a  
3           witness. But I'm not going to have him lay in the weeds and  
4           fail to respond to a subpoena that's been served that called  
5           for a response last month and have you -- when you didn't  
6           previously identify him as a witness for the hearing.

7           So that's going to be my order. I'm so ordering  
8           the transcript. Ma will make himself available for  
9           deposition in either New York or Toronto by -- a four-hour  
10          deposition to be concluded by this Thursday at noon, New  
11          York time. If he fails to make himself available for that  
12          deposition, he will not be permitted to testify at the  
13          preliminary injunction hearing.

14          MR. ROCHE: Your Honor, just want to understand,  
15          Your Honor. One point of clarification. Do you mean start  
16          by noon on Thursday or finish by noon --

17          THE COURT: No. I mean it has to finish by noon  
18          on Thursday.

19          MR. ROCHE: Understood.

20          THE COURT: And not only to testify in deposition  
21          but to produce documents responsive to the subpoena that's  
22          been served so that Akin Gump has those documents before  
23          they depose him. So they'd better produce documents today  
24          or tomorrow and, you know... But to be clear, unless  
25          documents are produced and he is available for a four-hour

1 deposition in either New York or Toronto, he will be  
2 precluded from testifying at the preliminary injunction  
3 hearing.

4 MR. ROCHE: Understood, Your Honor.

5 THE COURT: Mr. Hurley?

6 MR. HURLEY: Your Honor, may I ask one other  
7 thing? So, each of the other witnesses put in a declaration  
8 that will comprise their direct testimony at the hearing.  
9 And one of our requests was that we get that declaration  
10 from Mr. Ma so we know what it is he's being offered for.

11 THE COURT: You're going to -- you know, he is not  
12 an employee of KeyFi. And consequently, I don't believe  
13 that Mr. Roche can force him to provide a declaration in  
14 advance. So, you'll get your deposition.

15 MR. HURLEY: Understood, Your Honor.

16 THE COURT: And certainly, since Roche is not  
17 representing Ma, you can certainly ask during the deposition  
18 what he's discussed with Mr. Roche. There's no privilege  
19 attached and you can cover what anticipated discovery did he  
20 discuss with Roche. So you'll find out what it was he's  
21 prepared to testify and you can ask him whatever you want.  
22 But a four-hour deposition.

23 MR. HURLEY: Understand. And Kyle, if you could  
24 send me the name of the Quinn person you think is repping  
25 him?

1 MR. ROCHE: Will do. I will find that out this  
2 morning and will respond to you immediately.

3 00:21:58 THE COURT: All right. We're adjourned.

4 (Recess)

5 CLERK: All right. Starting the recording for  
6 December 20, 2022 at 10:00 AM. All right. Can counsel on  
7 behalf of Kirkland's please unmute and just start giving  
8 their appearance?

9 MR. KOENIG: Good morning, Deanna. It's Chris  
10 Koenig, from Kirkland & Ellis, here for the Celsius Debtors.  
11 I'm here with my partners, Pat Nash and Ross Kwasteniet.  
12 Thank you.

13 CLERK: Okay. Thank you. And I know we have also  
14 a line for Elizabeth Jones from Kirkland's, and they checked  
15 in before. All right. I'm going -- good morning, Mr.  
16 Herrmann. Can you hear me?

17 MR. HERRMANN: I can.

18 CLERK: You're coming in a little choppy.

19 MR. HERRMANN: Is this better?

20 CLERK: Yes. Yes, it is. If you could just give  
21 your appearance this morning?

22 MR. HERRMANN: Immanuel Herrmann, pro se Celsius  
23 creditor.

24 CLERK: Thank you. And there's some of the  
25 creditors (indiscernible) counsel. For the parties that

1 have joined, if anyone is speaking on the record this  
2 morning and has not given their appearance, please raise  
3 your hands one at a time and I will ask you to unmute and  
4 give your appearance. Yes, Ms. Milligan?

5 MS. MILLIGAN: Good morning. Can you hear me  
6 okay?

7 CLERK: Yes, I can.

8 MS. MILLIGAN: Thank you. Layla Milligan, with  
9 the Texas Attorney General's Office, appearing on behalf of  
10 the Texas State Securities Board and Texas Department of  
11 Banking.

12 THE COURT: Thank you.

13 MS. MILLIGAN: Thank you.

14 CLERK: And Shara?

15 MS. CORNELL: Good morning. Shara Cornell, on  
16 behalf of the office the United States Trustee.

17 CLERK: Thank you.

18 MS. CORNELL: Thank you.

19 CLERK: Are Mark Bruh or Brian Matsumoto going to  
20 be joining?

21 MS. CORNELL: Yes, I believe so, although I'm not  
22 sure if they'll be speaking.

23 CLERK: Okay. So you're speaking this morning.  
24 Perfect.

25 MS. CORNELL: Thank you.

1 CLERK: Thank you. Victor?

2 MR. DE LAS HERAS: Good morning, Deanna. Victor  
3 L. Ubierna de las Heras, pro se creditor. I'll be speaking  
4 this morning.

5 CLERK: Thank you. All right. I see we have some  
6 Committee counsel. If you could unmute one at a time and  
7 just give your appearance, please?

8 MR. PESCE: Sure. It's Gregory Pesce, White &  
9 Case, on behalf of the Committee. And I believe my partner,  
10 Aaron Colodny, if he hasn't already appeared, is going to be  
11 the other main speaker for today.

12 CLERK: Okay. So the both of you. All right.  
13 Perfect.

14 MR. PESCE: Thank you.

15 CLERK: Thank you. Ms. Kovsky?

16 MS. KOVSKY: Good morning, Deb Kovsky, Troutman  
17 Pepper, for the Ad Hoc Group Withhold Account Holders.

18 CLERK: Thank you. All right. Are there any  
19 additional parties that have joined that will be speaking on  
20 the record and have not given their appearance yet?

21 All right. Good morning. For the parties that  
22 have joined, please use their raised hand function and I  
23 will ask you to unmute if you are speaking on the record and  
24 have not given your appearance yet. All right. Mr. Adler,  
25 let's start with you.

1 MR. ADLER: Good morning, Your Honor. It's David  
2 Adler, from McCarter & English, on behalf of the Ad Hoc  
3 Group of Borrowers. I probably will be speaking today.

4 CLERK: All right. Thank you.

5 MR. ADLER: Thank you.

6 CLERK: All right. Mr. Marsh?

7 MR. MARSH: Good morning. This is Chase Marsh.  
8 I'm an involuntary pro se creditor. I sure hope I don't  
9 have to speak today, but I probably will.

10 CLERK: All right. Thank you for giving your  
11 appearance.

12 MR. MARSH: Thank you. Mr. Sabin.

13 MR. SABIN: It's Jeff Sabin, from Venable LLP, on  
14 behalf of Ignat Tuganov. I expect to be speaking today.

15 CLERK: All right. Is Arie Peled also speaking?

16 MR. SABIN: He is not.

17 CLERK: Okay. Thank you.

18 MR. SABIN: Thank you very much.

19 CLERK: All right. Mr. Ferraro, if you could  
20 unmute and give your appearance, please?

21 MR. FERRARO: Hi. Chris Ferraro, with the  
22 Debtors, Interim CEO, Chief Restructuring Officer and Chief  
23 Financial Officer.

24 CLERK: Thank you. For the other parties that  
25 have joined, if you could raise your hands, use the raise

1 hand function, and if you are speaking on the record this  
2 morning and have not given your appearance yet? Yes. Ms.  
3 Pillay?

4 MS. PILLAY: Good morning, Deanna. Shoba Pillay  
5 from Jenner & Block, as the Examiner.

6 CLERK: Thank you. And then is Mr. Lazar and Mr.  
7 Wedoff should be joining as well?

8 MS. PILLAY: Yes.

9 CLERK: Thank you. Any additional parties that  
10 have joined and have not given their appearance yet?

11 MS. ALMEIDA: Good morning. Nelly Almeida, from  
12 Milbank LLP, on behalf of Certain Holders of Series B  
13 Preferred Shares.

14 CLERK: Okay. Thank you. Are any other parties  
15 from Milbank going to be speaking this morning? Do you  
16 know?

17 MS. ALMEIDA: No. I don't expect there to be.

18 CLERK: Okay. Thank you. All right. For the  
19 parties that have joined, if you're going to be speaking on  
20 the record and have not given your appearance yet, please  
21 use the raise hand function to give your appearance. All  
22 right. Mr. Lazar.

23 MR. LAZAR: Good morning, Ms. Anderson. Vincent  
24 Lazar, Jenner & Block, on behalf of the Examiner.

25 CLERK: Thank you.

1 THE COURT: Hi, Deanna.

2 CLERK: Good morning, Judge, again.

3 THE COURT: Again.

4 CLERK: For the parties that have joined, if  
5 anyone is going to be speaking on the record this morning  
6 and has not given their appearance yet, please use the  
7 raised hand function to give your appearance.

8 All right. For the parties that adjoined, if  
9 anyone is speaking on the record this morning and has not  
10 given their appearance, please use the raised hand function  
11 and I will take your appearance one at a time. Mr.  
12 Frishberg?

13 MR. FRISHBERG: Yes. Daniel Frishberg, pro se.

14 CLERK: Thank you. All right. Please pause the  
15 recording for a moment. All right. For the parties that  
16 have joined, if anyone is speaking on the record this  
17 morning and has not given their appearance yet, please use  
18 the raised hand function and I will ask for you to give your  
19 appearance one at a time. Aaron Colodny?

20 MR. COLODNY: Hi, Deanna. This is Aaron Colodny,  
21 for the Official Committee of Unsecured Creditors, with  
22 White & Case LLP.

23 CLERK: All right. Thank you. All right. Karen  
24 Cordry? Sorry, I can't hear you.

25 MS. CORDRY: Yeah, sorry.



1 CLERK: Oh, there you go.

2 MS. CORDRY: Karen Cordry, National Association of  
3 Attorneys General, representing the Coordinating States.

4 CLERK: All right. Perfect. Thank you. And for  
5 those that have joined, if you're speaking on the record  
6 this morning and have not given your appearance and you'd  
7 like to speak, please use the raised hand function and I  
8 will ask you to give your appearance one at a time.

9 Again, the parties that have joined, if anyone is  
10 speaking on the record this morning and has not given your  
11 appearance, if you could please use the raised hand function  
12 and I will take your appearance one at a time. Mr. Kotliar,  
13 are you speaking on the record this morning?

14 MR. KOTLIAR: Good morning. Brian Kotliar, of  
15 Togut, for the Ad Hoc Group of Custodial Account Holders.  
16 It's possible that I will be speaking.

17 CLERK: All right. Is Kyle Ortiz going to be  
18 joining as well?

19 MR. KOTLIAR: No.

20 CLERK: Okay. Thank you. All right. Again, for  
21 the parties that have joined, if anyone is speaking on the  
22 record this morning and has not given your appearance,  
23 please use the raised hand function and I will take your  
24 appearance one at a time. All right. Mr. Bernstein?

25 MR. BERNSTEIN: Good morning. Jeffrey Bernstein,

1 McElroy Deutsch Mulvaney & Carpenter, for the New Jersey  
2 Bureau of Securities. Just in case I speak, I wanted to  
3 indicate my appearance. Thank you.

4 CLERK: Thank you. I appreciate that. Again, for  
5 the parties that have joined, if anyone is speaking on the  
6 record this morning and has not given your appearance yet,  
7 please use the raised hand feature and I will ask you to  
8 unmute and give your appearance.

9 All right. Again, for the parties that have  
10 joined, if anyone is speaking on the record this morning and  
11 has not given your appearance, please raise your hands. Use  
12 the raised hand function. I'll ask you to unmute and give  
13 your appearance. Yes, Jennifer?

14 MR. ROOD: Jennifer Rood, from Department of  
15 Financial Regulation.

16 CLERK: Thank you. All right. Please pause the  
17 recording for a minute.

18 We're recording. All right. We're going to get  
19 started. If everyone could please state their name each  
20 time they speak on the court record. Also, this is a court  
21 proceeding. Audio, video and any other recording or --  
22 pardon me -- any other recording of this hearing shall not  
23 take place, other than the official court version. If it is  
24 found out that there is other recording, audio, video, et  
25 cetera, that takes place, sanctions may be imposed.

1 Judge, would you like to begin?

2 THE COURT: Yes, I would. Thank you. And good  
3 morning, everybody. The Debtors filed an amended agenda for  
4 today's hearing. We're follow that hearing agenda. Let's  
5 start with the status update.

6 MR. KOENIG: Good morning, Your Honor. For the  
7 record, Chris Koenig, Kirkland & Ellis, for the Debtors.  
8 Deanna, could you please give screen share privileges to the  
9 Zoom account labeled "Chris Koenig", so that we can put the  
10 slides that we filed last night up on the screen?

11 THE COURT: Right. And I believe the slides have  
12 been filed as ECF Docket Number 1758 as an attachment to the  
13 notice of filing.

14 MR. KOENIG: Yes. Thank you, Your Honor. And  
15 I'll introduce Mr. Christopher Ferraro, who provided a  
16 status update to the Court on November 15th. We thought it  
17 would be beneficial for him to provide another update, now  
18 that it's been about a month. So, with the Court's  
19 permission, we'll go ahead with Mr. Ferraro.

20 THE COURT: I appreciate that. Go ahead.

21 MR. KOENIG: Thank you. Mr. Ferraro, can you  
22 please remind the Court of your current roles at Celsius and  
23 your general qualifications and experience?

24 MR. FERRARO: Yeah, thanks, Mr. Koenig, and good  
25 morning, Your Honor. I'll be brief in this answer, as I've

1 provided my background before. My name is Christopher  
2 Ferraro. I am the Interim Chief Executive Officer, Chief  
3 Restructuring Officer, and Chief Financial Officer of  
4 Celsius. I was appointed Chief Financial Officer on July  
5 11, 2022 and was appointed as Interim Chief Executive  
6 Officer and Chief Restructuring Officer on September 27,  
7 2022.

8 I have approximately two decades of experience in  
9 financial planning and analysis, asset and liability  
10 management, and product control.

11 MR. KOENIG: Mr. Ferraro, can you please provide  
12 an update on the current financial situation of Celsius?

13 MR. FERRARO: Yes, based on the most recent cash  
14 flow budget employment report that was filed on December  
15 12th, the total cash receipts vary by week, ranging from  
16 approximately \$1.5 million to nearly \$8 million. Our  
17 forecast shows that by the end of the year, we will have  
18 baseline liquidity of around \$95 million.

19 Before taking into account the proceeds from the  
20 sale of GK8, the latest forecast shows that we will need a  
21 liquidity infusion late in the first quarter of 2023. We  
22 will get quite tight in February, but the baseline liquidity  
23 of approximately \$30 million.

24 We expect to need additional liquidity in March.  
25 However, once the recent GK8 sale closes and the Court

1 resolves the issue of which party is entitled to the value  
2 of the GK8 sales proceeds, we could extend another 1.5 to 2  
3 months. And if the Court approves the sale of stablecoins,  
4 the total runway would extend to around May or June.

5 We filed for recognition of the GK8 sales  
6 proceedings with the Israeli Court yesterday, December 19th,  
7 and await the Court's decision. Our best estimate on the  
8 timing of the Israel recognition ruling is the end of  
9 January, and we expect the sale to close shortly thereafter.

10 With respect to coins, our total coin value as of  
11 the end of November was just above \$2.6 billion. We have  
12 over \$1 million in sETHs and approximately \$630 million in  
13 WBTC of ETC. The current equity of all, with the coin and  
14 non-coin assets is approximately \$1.2 billion.

15 MR. KOENIG: Thank you, Mr. Ferraro. Can you  
16 please tell the Court about the current status of the  
17 custody account withdrawals that have been authorized  
18 pursuant to the Debtors' withdrawal motion?

19 MR. FERRARO: Yes. Given that the Court recently  
20 authorized us to open withdrawals of certain custody and  
21 withhold accounts, we are working with our team to return  
22 these assets to the eligible customers as soon as possible.  
23 We are working through and implementation on our end and we  
24 understand how important this is for our customers. This is  
25 a major priority for us, with an emphasis on security and

1 ensuring the system, which has been off-line for months, is  
2 brought back online safely and securely, to ensure that the  
3 assets are protected and distributed in accordance with the  
4 order of the Court.

5 MR. KOENIG: Mr. Ferraro, can you please tell the  
6 Court about the implementation of the recently approved key  
7 employee retention plan?

8 MR. FERRARO: Yes, absolutely, Mr. Koenig. Since  
9 my last update, we received a Court order authorizing the  
10 company to make awards to a revised list of non-insider  
11 employees. In terms of numbers, the original employee  
12 retention plan included around 59 employees, which  
13 represents about 35 percent of the total current workforce,  
14 not taking into account employees who have submitted  
15 resignations or are in the notice period following the  
16 recent RIF action.

17 In addition, we had discussed at the last hearing  
18 since filing the initial KERP that we have continued to look  
19 into a number of employees' withdrawals made before the  
20 pause. And as a result, working with our advisors, the  
21 Committee and the Special Committee, we reduced the initial  
22 list and expect to wrap up our investigation soon, so we can  
23 propose having back a number of employees in the future.

24 Lastly, we set aside around \$200,000 for employees  
25 that are not among the 59 initially selected, but that

1 depending on the circumstances, we may need to incentivize  
2 to stay with the company down the line.

3 In addition to some of the critical efforts we  
4 have discussed throughout the hearings, including asset and  
5 data security and responding to information requests to  
6 support our Chapter 11 process, our team members are focused  
7 on a number of critical areas. And I thought I would  
8 highlight just a few of these today.

9 As I will discuss shortly, there is a great deal  
10 of work underway in our product around the standalone  
11 reorganization plan, which we are currently referring to as  
12 a NewCo. And our technology team prepares for the reopening  
13 of withdrawals for certain custody and withhold accounts.  
14 They are also working to architect the technology to support  
15 the NewCo.

16 MR. KOENIG: Thank you, Mr. Ferraro. Switching  
17 gears for a moment, can you please --

18 THE COURT: I'd ask a question --

19 MR. KOENIG: -- provide a high-level summary of  
20 the status of the ongoing --

21 THE COURT: Wait.

22 MR. KOENIG: I'm sorry.

23 THE COURT: Mr. Koenig, before you go on, at the  
24 last hearing when we discussed the KERP, there were  
25 resignations that had been submitted. People had not yet

1 left. Putting those aside, have there been any additional  
2 resignations since the last hearing when I had an update  
3 from Mr. Ferraro?

4 MR. FERRARO: Yeah, great question, Your Honor.  
5 I'm going to work off of -- since the last time we filed an  
6 amended KERP quite recently. We've had a total of 13  
7 resignations since then. One of the 59 on the KERP resigned  
8 as well. So 12 not the KERP; one on the KERP.

9 THE COURT: Thank you.

10 MR. FERRARO: Yep.

11 MR. KOENIG: Thank you. Mr. Ferraro, just to  
12 repeat my question, can you please provide a high-level  
13 summary of the status of the ongoing bid process?

14 MR. FERRARO: Yes, Mr. Koenig. Since September of  
15 2022, we have been working with our advisors to conduct a  
16 marketing process for our retail (indiscernible) business.  
17 We've contacted over 125 parties with 30 potential bidders,  
18 executing NDAs. Interested parties under an NDA were given  
19 access to a comprehensive virtual data room and the Celsius  
20 management team, so that these potential bidders could  
21 conduct a thorough due diligence process before they  
22 submitted their bid proposals.

23 The qualified bid deadline was December 12th, and  
24 we received multiple bids, complete with definitive  
25 documentation. Certain bidders provided good faith



1 deposits, as required by the bidding procedures, proposing a  
2 wide range of potential transactions and business  
3 structures. These bids contemplate, among others,  
4 individual asset purchases, as well bids acquiring the  
5 entire retail platform, and providing additional value to  
6 the Debtors' estate through customer migration, asset  
7 management platforms, and distribution services structures.

8 Not all of the bids meet all of the Court approved  
9 criteria and some have other deficiencies. Therefore, we're  
10 going to use the upcoming weeks to work with our advisors  
11 and engage with bidders to try to improve the bids, take the  
12 more actionable, and ultimately into qualified bids.

13 At a high level, the customer migration structures  
14 involve payment to the estates in exchange for migrating  
15 customers and the company's cryptocurrency assets to the  
16 buyers' platform. Customers who migrate would then receive  
17 access to a percentage of the company's cryptoassets on the  
18 buyers' platform.

19 In the asset management platform structure, the  
20 acquirer would buy a significant portion of the company's  
21 assets, other than those for a class of smaller holders who  
22 are proposed to receive crypto and other consideration, and  
23 then transfer the assets to a newly formed asset management  
24 entity managed by the buyer. The company's creditors, whose  
25 shares of assets are transferred to the acquirer, would then

1 receive tokens representing the value of the assets and  
2 business operations in the newly formed entity, as well as  
3 tokens representing a portion of the management fee paid to  
4 the asset manager. And these new tokens would trade on the  
5 blockchain.

6 Finally, in the distribution services structure,  
7 the acquirer would purchase the company's assets and  
8 transform them -- or transfer them, to their own platform.  
9 The company's creditors would then receive access to a  
10 prorated portion of the company's crypto tokens through the  
11 acquirer's platform. Illiquid assets would be transferred  
12 to special-purpose vehicles, with equity in the acquirer's  
13 platform distributed to creditors.

14 Overall, I'm optimistic about the company's  
15 options and look forward to working with the Debtors, the  
16 community -- I'm sorry -- the Committee and other key  
17 stakeholders to improve the bids as much as possible and  
18 determine the best path forward.

19 And once we have a firmer idea of the path  
20 forward, we intend to immediately engage with the regulators  
21 to discuss our ideas and help address any questions or  
22 concerns they may have.

23 At this point, there are still too many options  
24 under consideration. We want to narrow the options a bit  
25 before we go to the regulators.

1 MR. KOENIG: Thank you, Mr. Ferraro. Could you  
2 now please provide an update on the company's efforts for a  
3 standalone reorganization plan, what you referred to as  
4 NewCo?

5 MR. FERRARO: Yes. To be clear, the NewCo plan is  
6 still being formulated, as we negotiate with all parties in  
7 interest. We are aiming to determine the best path forward,  
8 be it in the NewCo plan or one of the sales options I just  
9 mentioned. We are continuing to work with all parties to  
10 file a disclosure statement and plan in advance of  
11 exclusivity expiring in mid-February.

12 With the disclaimer and the Court's permission, I  
13 would like to preview a high-level summary of the current  
14 thinking of the NewCo reorganization plan.

15 Today's cryptocurrency market is very different  
16 from what it was a year ago. The number of large  
17 cryptocurrency platforms that are in distress or have filed  
18 for Chapter 11 is significant. As a result, today's market  
19 is all about transparency and trust.

20 To be successful, a cryptocurrency platform  
21 establishes trust by solving investment needs with  
22 transparency and accountability. Such a platform requires  
23 proof of reserves, proof of liabilities, and onchain  
24 investments. With that in mind, the NewCo plan involves a  
25 creditor-owned wealth management platform that offers access

1 to independent crypto service providers, fund managers, and  
2 an operating system that has onchain proof of reserves and  
3 proof of liabilities. This transparency will allow the  
4 company to effectively be audited in real time by anyone  
5 with an Internet connection.

6 To implement the NewCo plan, qualified custodians  
7 will manage all user assets. User deposits will be custody  
8 and wrapped tokens will be minted and issued to the users.

9 Finally, virtual asset service providers such as  
10 staking partners and liquidity partners will deploy assets  
11 based upon the direction of the qualified custodian, via  
12 direct requests and approvals from the users.

13 As with the asset management bid, we expect a  
14 small class, or a class of smaller holders, less  
15 sophisticated investors would not participate in this  
16 venture and would instead receive a distribution of crypto  
17 and other value.

18 While the platform will cater to a wide array of  
19 customers, ranging from newcomers to high-volume leveraged  
20 traders, we anticipate our key customers will be mass-  
21 affluent to high net worth individuals, and customers that  
22 have a long-term and optimistic view of the cryptocurrency  
23 market.

24 MR. KOENIG: Thank you, Mr. Ferraro. Finally, can  
25 you please provide an update regarding the company's current

1 mining operations?

2 MR. FERRARO: Yeah. We are continuing to build  
3 out our mining operations and improve efficiencies. Mining  
4 has generated positive operating cashflows and positive  
5 EBITDA every month this year in 2022. It is important to  
6 remember that we curtail our miners if the marginal cost of  
7 mining pit is greater than the (indiscernible). And this is  
8 done at a site level.

9 We have completed construction, energization and  
10 deployment of rigs at three of the four proprietary mining  
11 sites. All four of these sites are located in the state of  
12 Texas. Garden City, our first site to go online, has been  
13 mining bitcoin since September. And the site has high  
14 uptime and current produces around 30 bitcoins per month.

15 The other two, Rebel and Stiles, both went online  
16 in mid-December. And the final site, East Stiles, we have  
17 completed the transmission and distributional work, along  
18 with the construction of two of the four buildings. The  
19 site is expected to go online in early to mid-first quarter,  
20 completing the 87 megawatt proprietary sites.

21 To be clear, mining is an important asset in any  
22 reorganization and restructuring option, including the sale  
23 or (indiscernible) reorganization.

24 MR. KOENIG: Thank you, Mr. Ferraro. That  
25 concludes the update, unless Mr. Ferraro has anything else

1 that he liked to add.

2 MR. FERRARO: No, nothing more, Mr. Koenig. Thank  
3 you. I would like to say thank you to Your Honor for giving  
4 me the opportunity again to provide an update to the Court.  
5 And unless Your Honor has any questions, this concludes my  
6 update.

7 THE COURT: Let me ask this. Do any of the bids  
8 include bids for the mining assets?

9 MR. KOENIG: They do, Your Honor. Yes.

10 THE COURT: Are there separate bids for the mining  
11 assets, or inclusive of the rest of the platform?

12 MR. KOENIG: Both, Your Honor. Both individually  
13 and as part of a more holistic sale transaction.

14 THE COURT: All right. So, if you would, Mr.  
15 Koenig, give me an estimate of the timing of going forward  
16 with the sale process. The original date has been put off.  
17 The Debtors' and its advisors, the Committee and its  
18 advisors, from reading the docket, have been conferring.  
19 What is your estimate of when the marketing and also the  
20 standalone process will go forward? Obviously, exclusive --  
21 you have a date when you've committed to submit a proposed  
22 standalone plan. But give everyone a sense of the timing  
23 now.

24 MR. KOENIG: No, of course, Your Honor. What  
25 we've been doing since receiving the bids, the final bid

1 deadline, is continuing to work with the bidders to try to  
2 improve the bids, make them into qualifying bids, and of  
3 course the best bids possible.

4 We're going to continue to work with the bidders  
5 and the Committee over the coming weeks to select a path  
6 forward. We currently expect that we will announce  
7 something in early to mid-January as far as the path that  
8 we're pursuing. And then we'll take that announcement and  
9 build it into the formal documentation, a Chapter 11 plan,  
10 asset purchase agreements, whatever the case may be. So we  
11 expect that this process is going to come to a head in the  
12 coming weeks, in the beginning to middle of January.

13 THE COURT: All right. Anything you want to add  
14 at this point, Mr. Koenig?

15 MR. KOENIG: No, thank you, Your Honor. That  
16 concludes the update.

17 THE COURT: All right. Let me ask for the  
18 Committee, someone on behalf of the Committee, if you would  
19 address the issues raised by Mr. Koenig and Mr. Ferraro and  
20 the update, and where the Committee sees this case going.

21 MR. PESCE: Sure. For the record, Gregory Pesce,  
22 White & Case, on behalf of the Committee. Can you hear me,  
23 Your Honor?

24 THE COURT: I can very well. Thank you.

25 MR. PESCE: Yes. So, prior to the bid expiration

1 date, the Committee had been speaking directly with some  
2 bidders. We've been speaking collectively with some bidders  
3 on behalf of the company and steering other parties to them.

4 You know, as Mr. Koenig said, we received a number  
5 of proposals. They're all very -- the external proposals  
6 are all very promising, and then we're in Ewing to do some  
7 work with them on the internal reorganization concept.

8 After speaking with a number of the bidders, we  
9 felt that some more time was needed, particularly given the  
10 Christmas holiday and some other that work that we needed to  
11 do there. As Mr. Koenig said, we are spending a lot of time  
12 over the holiday to try to figure out the path here.

13 You know, we've had a pretty long meeting. We've  
14 had pretty long meeting several days each of the last two  
15 weeks to talk about potential plan structures. We're going  
16 to have another meeting today or tomorrow to talk about it  
17 as well. And it's our hope, like Mr. Koenig said, that we  
18 can get something chosen by the beginning or middle of  
19 January so that it could be socialized. And then we can  
20 include the feedback from the examiner's report, if any is  
21 relevant, on January 17th.

22 But again, time is not our friend here. We really  
23 want to move fast. So, if these external proposals or the  
24 internal reorganization that's being contemplated don't  
25 work, or they're inconsistent with our timeline or our



1 budget here, the Committee is going to be ready to move  
2 forward one way or the other in the middle of February with  
3 an option that doesn't require an outside bidder or internal  
4 reorganization. Because people need to get their recoveries  
5 here sooner than later. Many people are very cognizant, or  
6 really depending on the money, and the coins they put on  
7 Celsius.

8 So, to date we've gotten a lot of cooperation from  
9 the Debtor. We're continuing to give them leads. And as  
10 you will come to us directly, we try to look them into that  
11 process, get them under NDAs, et cetera. And we'll talk  
12 more about this in the mediation motion, I'm sure. But from  
13 our perspective, the process is working as intended. You  
14 know, regrettably, it's long and expensive, but we're making  
15 -- everyone is moving as quickly as we can under these  
16 circumstances.

17 THE COURT: So let me -- this really goes for all  
18 of you, but for the Debtors and the Committee, and that  
19 really has to do with interacting with the regulators. It's  
20 been clear from the start of this case, and actually before  
21 the start of the case, the Debtor had changed its business  
22 model in light of regulatory concerns that had arisen.

23 And, you know, the sooner -- and I can understand  
24 it may be premature, at least for over the next few weeks,  
25 to really engage with the regulators. But I really think

1 that whether you're talking about a standalone plan or a  
2 sale process, it isn't going to go anywhere unless there's  
3 been a full exchange with the regulators to get their input.  
4 And so I am concerned that that appears not to have happened  
5 so far.

6 MR. PESCE: Your Honor, it's Greg Pesce, from  
7 White & Case, if I may jump in there, just to give a little  
8 bit of context on that. And I was going to speak about this  
9 at the mediation motion, but I'll move that forward.

10 So a group of people from my firm, M3 and  
11 Elementus have been speaking with the regulators with some  
12 regularity. We had an hour-long meeting last Thursday the  
13 15th, in fact, to talk about the process and to give a  
14 preview of some of the bids that have -- you know, concepts  
15 that have been received and what we're thinking about there.  
16 And it's our expectation that we're going to have to talk to  
17 them a lot more.

18 But your point's not lost on us. We're urging  
19 everyone to talk more and share information with the  
20 regulators. I understand some regulators were not part of  
21 that call or may feel that they need to be more involved.  
22 We're happy to meet with anyone and we'd urge the Debtor to  
23 do the same with them as they develop what path they want to  
24 do here.

25 MR. KOENIG: And Your Honor, it's Chris Koenig for

1 the Debtors, just to add on to what Mr. Pesce said.  
2 Obviously, regulatory compliance is a top priority for  
3 Celsius. We're not going to get out of this case without  
4 having the regulators onboard. We're laser focused on it  
5 and have been. We have working groups that have worked with  
6 the Committee professionals to try to narrow the issues so  
7 that when we -- when we're ready to go to the regulators, it  
8 can be efficient as possible

9 And as Mr. Ferraro explained in his update, we  
10 intend to move quickly to speak to the regulators as soon as  
11 we narrow the options a little bit. There's obviously a lot  
12 of different structures that are currently on the table.  
13 And once we have a little bit more clarity about the path  
14 forward, we're going to need to engage with the regulators  
15 to make sure that we take care of this as soon as possible  
16 and we address whatever questions and concerns they have.  
17 So it's certainly not lost on us either, Your Honor.

18 THE COURT: All right. Two of the people on  
19 behalf of the regulators who have appeared regularly, and I  
20 want to ask them -- not intending to exclude any of the  
21 other regulators' counsel -- but let me ask Ms. Milligan  
22 first and then I'm going to call on Ms. Cordry.

23 MS. MILLIGAN: Thank you, Your Honor. Layla  
24 Milligan with the Texas Attorney General's Office on behalf  
25 of the Texas State Securities Board and Texas Department of

1 Banking. We have been in communication with the Committee  
2 and have been given basically general updates as far as  
3 possibilities. We have not been in regular communication  
4 with the Debtors. I understand that they are planning to  
5 communicate with us once they get a better footing of where  
6 they're going.

7 We are concerned because the company is not  
8 regulatorily compliant in Texas and our understanding is  
9 they are not in compliance in a number of other states. The  
10 process of becoming regulatorily compliant is not an  
11 immediate one. So it is a process that takes time and  
12 effort. And we are not -- we do not have information about  
13 how that process will work if there's a NewCo that intends  
14 to have an investment vehicle associated with it. That  
15 would have to be regulatorily compliant. If they sell to  
16 another investment vehicle, they would have to be  
17 regulatorily compliant. And these things take time.

18 And so, if there is a limited runway and there's a  
19 decision made and there's 30 to 60 days left to get  
20 everything in alignment, it just may not be possible. So we  
21 certainly as much money to be returned to investors as  
22 possible. And we will work as quickly as we can on the side  
23 of the regulatory bodies.

24 But we do have concerns about what the Debtor  
25 intends to do. And the sooner we can start those

1 discussions, the better, as far as we're concerned.

2 THE COURT: Thank you. Ms. Cordry, do you want to  
3 be heard?

4 MS. CORDRY: Yes. I would basically echo what Ms.  
5 Milligan said. We did ask for the call last week with the  
6 Committee and I basically, when I was asking for it said,  
7 look, is there someplace this company can go? And is there  
8 someplace that it can end up with in the kind of time period  
9 it has?

10 The discussion we had with them was promising.  
11 They were moving forward with these various bids and so  
12 forth. That's one of the reasons you'll hear, of course,  
13 while he took the position we did on the mediator motion at  
14 this moment.

15 I, again, would agree with what Ms. Milligan said,  
16 which is saying you're going to become regulatorily  
17 compliant is not a matter of just saying, okay, I'll go down  
18 to the driver's license bureau and get my driver's license  
19 today. It is a licensing process that to the extent they  
20 are selling securities, which in many respects most of the  
21 time they may well have to do, it's a weeks to months-long  
22 process, not a days process kind of thing.

23 So that's one reason why we do have a great deal  
24 of concern. The sooner they can talk to us, the sooner they  
25 can start any of these processes, the better. It may be

1 possible they can set up some kind of investment vehicle  
2 with accredited investors only that requires less regulatory  
3 compliance issues with us. We wait to see that. We're  
4 interested and were happy to see that there's some process  
5 going forward.

6 We appreciate Your Honor's attention to keeping  
7 their feet to the fire on these issues. Thank you.

8 THE COURT: Okay. Any of the other regulators  
9 want to be heard? This is not intended as a full-blown  
10 analysis of these issues. I single out the issue with the  
11 regulators. I mean, Mr. Ferraro and Mr. Koenig raised it;  
12 Mr. Pesce raised it.

13 But I'm keenly aware that an exit out of this  
14 bankruptcy, either standalone or sale, is going to require  
15 time for the regulators to evaluate what's proposed. So the  
16 sooner the Debtor and Committee can engage in real serious  
17 discussions with the regulators, the more likely to have a  
18 successful exit. Okay.

19 Do any of the other regulators' counsel wish to be  
20 heard? Yes. I see a hand raised.

21 MR. BERNSTEIN: Good morning, Your Honor. Jeffrey  
22 Bernstein, McElroy Deutsch Mulvaney & Carpenter, for the New  
23 Jersey Bureau of Securities. I also was able to participate  
24 in the call with the Committee last week, and I echo the  
25 thoughts of Ms. Milligan and Ms. Cordry about the importance

1 of the regulatory scheme. And we appreciate the comments of  
2 Your Honor, the Debtor and the Committee. And it does take  
3 time. And we certainly intend to cooperate to the extent  
4 that something can be facilitated. But it does take work.

5 Thank you, Your Honor.

6 THE COURT: Thanks, Mr. Bernstein. Ms. Rood?

7 MS. ROOD: I would just -- Jennifer Rood, for the  
8 Vermont Department of Financial Regulation. I'd echo the  
9 comments of Ms. Milligan and Ms. Cordry. And the only other  
10 thing I'd add is that in addition to time to become  
11 regulatorily compliant, it takes robust financial  
12 disclosure. And we're concerned that not only does the  
13 company have limited liquidity, but they haven't provided  
14 even so much as a basic liquidation analysis, much less the  
15 kind of robust financial disclosure that would be required  
16 in connection with the securities offering.

17 So we are concerned about that. We are concerned  
18 about whether they have enough runway to get all this  
19 completed.

20 THE COURT: Thank you, Ms. Rood. Ms. Thomson?

21 MS. THOMSON: Good morning, Your Honor. This is  
22 Lucy Thomson. I'm the Consumer Privacy Ombudsman. Thank  
23 you for raising the question about regulatory involvement.  
24 I've been waiting to hear more details from the Debtors  
25 about the plan, and it's very helpful to hear what they plan

1 today.

2           There are many issues on the privacy front about  
3 which accounts will be sold, particularly with respect to  
4 the closed accounts, and what kind of notice those investors  
5 will receive, and how the vast amount of personal data will  
6 be handled. So I look forward to calls with the Debtors and  
7 the Committee to address some of those issues.

8           THE COURT: Thank you very much, Ms. Thomson. All  
9 right. So let's move on on the agenda now to the contested  
10 matters, Mr. Herrmann's motion to appoint a mediator. Mr.  
11 Herrmann, do you want to argue first?

12           MR. HERRMANN: Yes. Thank you, Your Honor. For  
13 the record, Immanuel Herrmann, pro se creditor. Can you  
14 hear me?

15           THE COURT: Yes, I can. Go ahead.

16           MR. HERRMANN: Okay, great. Thank you, Your  
17 Honor. I filed my motion for a Chapter 11 mediator because  
18 I believe it would move these cases forward, address major  
19 legal issues, and get key parties to the negotiating table,  
20 such as earn customers, loans and custody, and that it would  
21 get us out of Chapter 11 faster.

22           As of this morning's hearing, the largest  
23 constituencies support mediation, including a number of our  
24 own customers, the loans Ad Hoc and the custody Ad Hoc.  
25 These are the biggest constituencies in the case and have



1 the most legal issues pending before this Court.

2 The Debtor and the UCC say we aren't ripe for  
3 mediation yet. That mediation isn't yet useful and that it  
4 will add more costs at this time, or that mediation should  
5 just facilitate the existing parties who are already  
6 talking; in other words, the Debtor and the UCC to continue  
7 talking.

8 I disagree and custody and loans and several earn  
9 customers disagree. I believe it will resolve -- it will  
10 help facilitate the resolution of key issues, save estate  
11 dollars, and help get us out of Chapter 11 faster and for  
12 less money.

13 The states do not want to be compelled to attend  
14 mandatory mediation at this time. I addressed this in my  
15 reply. I agree with their arguments that they do not need  
16 to attend mediation yet. I do, however, believe their  
17 presence could be important soon for some of the issues that  
18 came up earlier and some of the reasons that came up earlier  
19 in this hearing.

20 Any plan, especially a reorganization plan, will  
21 need -- a standalone reorganization plan will need input  
22 from regulators. My view, Your Honor, is that the major  
23 parties in this case need to start resolving their issues  
24 sooner rather than later, and that mediation is a more  
25 efficient way to do it than litigation.

1           The process of selecting a mediator, onboarding  
2           him or her, and all of that, will take some time, and  
3           finalizing the issues as well. I anticipated this time lag  
4           with my motion, which is why I filed it when I did.  
5           Specifically, key dates are coming. January 3rd is the bar  
6           date, but we have not yet resolved the key issue of which  
7           entities customers have claims against, or if cryptocurrency  
8           claims should be converted to dollars.

9           There will be a number of disputed claims types  
10          coming, such as suspended accounts, pending, returns  
11          collateral, and liquidated loans, and the fight with  
12          preferred shareholders is still scheduled to take place and  
13          is unresolved.

14          January 10th is now the line for an auction for  
15          retail assets at the sale hearing on January 22nd.  
16          Meanwhile, in between those two dates, on January 17th the  
17          examiner's final report will come out. And then the  
18          Debtors' exclusive periods ends faster than we all imagined,  
19          February 15th.

20          So, by the time the sale hearing happens on  
21          January 22nd, in my view the parties should be in mediation.  
22          Having a short period of mediation before the end of the  
23          exclusivity period and while we have bids submitted, I  
24          believe would help the mediation parties resolve key issues  
25          while we evaluate whether there is a viable plan going

1 forward, either through a bid or a standalone  
2 reorganization.

3 To be clear, my mediation proposal is not intended  
4 to interfere with any sales process or to shorten the  
5 exclusivity period in any way, which I supported extending,  
6 provided that there was a lot more communication with the  
7 creditors.

8 After there is a bid or we organization plan,  
9 maybe peace breaks out between the constituencies. Maybe we  
10 won't need mediation. I'm betting that we will, however.  
11 And realistically, to make that happen, we need to get  
12 started on putting it together now.

13 So, Your Honor, I urge you to order a mandatory  
14 mediation at a minimum between the Debtors, the UCC, and the  
15 representatives of the biggest creditor constituency groups,  
16 which include earn, loans and custody, potentially including  
17 the preferred shareholders as well, depending on the results  
18 of the briefed legal issue.

19 I believe that other parties, including the  
20 regulators, can join, if and when it makes sense, in  
21 particular if the mediator encourages their attendance.

22 THE COURT: All right. Thank you, Mr. Herrmann.  
23 All right. So the Court, in addition to reviewing Mr.  
24 Herrmann's motion, there have been numerous responses,  
25 joinders, or limited objections that have been filed.

1 Rather than hearing those who want to argue in support -- I  
2 have their positions; I've read their position statements --  
3 let me hear first from the Debtor and then form the  
4 Committee.

5 MR. KOENIG: Thank you, Your Honor. Again, it's  
6 Chris Koenig, Kirkland & Ellis, for the Debtors. Your  
7 Honor, as reflected in our objection that we filed at Docket  
8 1738, the Debtors oppose the motion. The Debtors generally  
9 do not believe that mediation will move these cases forward  
10 at this time.

11 On the contrary, as Mr. Ferraro just explained,  
12 the Debtors are moving towards the conclusion of their dual  
13 track sale and marketing process and standalone  
14 reorganization efforts, and we expect to work with the  
15 Committee to improve the bids and select a value-maximizing  
16 option in the coming weeks. We also expect to file a  
17 Chapter 11 plan before exclusivity expires on February 15th.  
18 For that reason, we believe that mediation is premature.  
19 We believe that the Debtors, the Committee and the other  
20 parties should be focused on selecting the path forward,  
21 improving the bids, engaging with regulators and other  
22 parties.

23 And then, at that time, if there are disputes that  
24 remain, perhaps mediation would be more appropriate for  
25 another day. But that time is, plainly, not now, as is

1 accurate in the objections of the Committee and the State  
2 regulators.

3 I don't want to duplicate Mr. Ferrara's update on  
4 the business, but just a few key points for the Court's  
5 consideration. We think the mediation would be duplicative  
6 and premature. There are a few unique circumstances at play  
7 here, that would reduce the utility mediation, including,  
8 number one, the examiner's report is coming out next month,  
9 on January 17, that would likely shape the parties' views  
10 and mediation, may narrow the issues; parties will need time  
11 to process the mediator's report -- sorry, the examiner's  
12 report, and evaluate their positions in light of her  
13 findings.

14 Several of the matters under the proposed  
15 mediation are already under advisement with the Court, have  
16 been fully briefed and argued. The parties will review the  
17 Court's rulings in due course and assess their positions.  
18 And briefing on other matters is already underway. The  
19 dispute with the preferred equity holders, Your Honor,  
20 entered a schedule, I believe it was just yesterday, and  
21 we're proceeding forward on that basis.

22 We also think that the scope of the mediation is  
23 extremely broad and would not be productive. Mr. Herrmann's  
24 motion describes a non-exclusive list of ten proposed  
25 mediation topics. These topics include broad topics such as

1 what happens with clawbacks? What happens with CEL Token?  
2 How do we get to a plan that will ultimately be popular with  
3 creditors? These topics, you know, may not be answerable in  
4 mediation and certainly are not ripe at this time. Even  
5 assuming that Mr. Herrmann's motion is granted as he would  
6 like, we wouldn't be able to resolve these issues with Mr.  
7 Herrmann and a few other pro se creditors at the table.

8 Take clawbacks, for example. These preference  
9 issues are complex issues in first impression, in the crypto  
10 currency area. And each potential defendant would have its  
11 own rights and arguments regarding clawbacks. It's  
12 impossible to think about how we could resolve clawbacks  
13 generally in a mediation.

14 Lastly, Your Honor, we're mindful that nothing we  
15 can say in the moment will erase the criticisms that are on  
16 social media and elsewhere about the Debtors and their  
17 advisors. To be clear, the company, and its advisors are  
18 doing its best to be as responsive as possible to  
19 communicate directly with individual account holders.  
20 Hopefully, Mr. Ferrara's presentation this morning provided  
21 some additional color and transparency to account holders.  
22 We're committed to continuing to provide this increased  
23 information as we work through the process and select the  
24 value maximizing path forward.

25 THE COURT: Thank you.

1 MR. HERRMANN: Thank you.

2 THE COURT: Let me hear from the Committee.

3 MR. PESCE: Thank you, Your Honor. Gregory Pesce,  
4 White & Case, on behalf of the Committee.

5 The mediation motion is, no doubt, well  
6 intentioned. These cases have gone on a lot longer than we  
7 all would have liked. They cost a lot more money. And, in  
8 particular, the information that many users might have been  
9 used to getting before the bankruptcy through social media  
10 and otherwise, is very different than what we have here.

11 So, all that being said, we think that there's  
12 always -- to the extent the motion is seeking more  
13 information, the Committee is open to trying to facilitate  
14 having more information. You know, to date, we've done a  
15 lot on this effort. The Debtor, last week, filed a new  
16 point report. Mr. Ferraro is here today. The Debtor filed  
17 a somewhat unique bid update last week, and then more  
18 information was provided today. The Committee, for its  
19 part, is doing town halls, and we've spent over 1,000 hours  
20 talking to pro se creditors to contact us.

21 So, we've done a lot on the communication front,  
22 but Mr. Herrmann's points are well taken, that we, and we  
23 will urge the Debtor to try to make more communication  
24 available to the users, and obviously, as mentioned earlier,  
25 to do more with the regulators.

1           Insofar as, you know, dealing with the case  
2           itself, and mediation, in our view, the process, as  
3           difficult and long and expensive as it may be, it's working  
4           as Congress intended, if not as Mr. Herrmann had hoped. The  
5           UCC is the constituent for all account holders, and we're  
6           doing everything we can to help account holders. We  
7           understand some positions he's taken are controversial.

8           That said, we hope the account holders don't scorn  
9           is and the resources that we have here. We are here and  
10          available to help the account holders to get their position,  
11          then try to use them to influence the process.

12          To that end, the process among the different  
13          organized groups is also working as intended. Litigating  
14          issues are getting briefed. I expect some of them will soon  
15          start to get decided. And the organized parties, the  
16          Debtor, the Committee and various ad hoc groups are all  
17          talking about different ways we might resolve different  
18          aspects of the case. I can't go into detail about what that  
19          might involve, but we're all cognizant of the cost and time  
20          associated here in trying to bring that to closure.

21          So, all that being said, we don't think mediation  
22          is right today, but we do think it could be right in the  
23          not-to-distant future. But right now, what we're focused  
24          on, rather than choosing a mediator and using the holiday  
25          weeks and beginning of the new year, we want to focus, like



1 I said earlier on, working with the Debtor on its plan. And  
2 if that doesn't work, putting forward our own plan once we  
3 have the input from the examiner's report and the other key  
4 input that you mentioned today. So, I thank you for your  
5 time today, Your Honor.

6 THE COURT: Thank you Mr. Pesce. Mr. Herrmann, do  
7 you want to respond?

8 MR. HERRMANN: Yes, Your Honor. A couple of  
9 things: One, as I said, I believe that between now and  
10 January 17, that the mediation issues become more clear. In  
11 terms of whether earn customers, you know, some pro se earn  
12 customers can represent earn in -- you know, obviously, we  
13 can only represent ourselves. I will say, there have been  
14 some issues that have come up with the ad hocs and whether  
15 they represent anyone more than their members. But I think  
16 that what we can do in mediation is work through some of the  
17 key issues. And I also think if it were critical to retain  
18 counsel for mediation that we could talk about that or make  
19 that happen.

20 So, I also believe that, you know, I don't think  
21 that -- I didn't file this motion to say we will resolve  
22 every issue that I listed in the motion in mediation. I  
23 filed it to start a conversation, more or less, about  
24 mediation. And, you know, I understand that the issues may  
25 shift, but I think that, you know, by the time we actually

1 get going with mediation which I think will take weeks. And  
2 so, when the other parties are arguing that mediation, you  
3 know, may be later, what are we going to do? File a motion  
4 for mediator on an expedited timeline after a plan comes out  
5 and then we're going to have to select the men? I think it  
6 would be better, just in case, to have a candidate lined up,  
7 just like when you look at the strategies. They have dual  
8 track strategies, right. They're working on stand-alone  
9 reorg and a sales process at the same time. So, this is  
10 really similar to that. I think we should have a mediator  
11 as a potential strategy lined up and ready to go. It seems  
12 to me a quite low-cost thing to do. And you know, I'll note  
13 in the loans joinder that came in this morning, there are  
14 some key issues, like issues between earn and borrow, the  
15 two largest constituents in the case. I know there's been  
16 some talk in public even, of selling the loans book, for  
17 example, and some claims that loan holders have.

18 I don't know what the proposal is by the parties  
19 to work out those issues. We don't have a schedule for  
20 those. But if they want to sell the loan book, for example,  
21 separately, and they want earn customers, generally, to  
22 support that, you know, conversations would be helpful, that  
23 include legal and financial analysis of what that would look  
24 like.

25 And then, with custody, it seems to me that it's

1 going to be quite a long time before the accounts above  
2 \$7,575 are released. And then, you know, that there's  
3 hundreds of thousands of dollars, or more, in potential  
4 litigation coming on many issues.

5 And then, there's issues that, you know, that are  
6 called corner-case issues, but actually could be larger than  
7 withholds. So, like for example, collateral that was  
8 returned to earn accounts, I believe is probably larger than  
9 withhold. We haven't done discovery on it. So, there's a  
10 lot of issues that may not --

11 THE COURT: I'm going to ... let me give you one  
12 more minute.

13 MR. HERRMANN: Okay. I mean, actually -- thank  
14 you. I don't have a whole lot to say. I mean, are there  
15 any questions for me or anything else that would be helpful  
16 to hear about --

17 THE COURT: No. I'm going to deny the motion  
18 without prejudice. I think there are already many issues  
19 fully briefed and argued awaiting decision. There are  
20 schedules in place for other issues to be addressed that are  
21 important issues. I think the examiners, the filing of the  
22 examiner's report, as well as more concrete information  
23 about a stand-alone plan or sale, will help make the issues  
24 much more concrete, and the Court could decide then, with or  
25 without a motion, Mr. Herrmann, whether or not to appoint a

1 mediator to try and resolve additional issues. I think it's  
2 premature until some of these additional issues become  
3 clear.

4 I raised the issues today about the regulatory  
5 issues, either with a stand-alone plan or with a sale. The  
6 regulatory issues are going to be extremely important, and  
7 it's going to require more discussion between the Debtors,  
8 the Committee and the regulators, to try and push forward on  
9 that. So, I think it's premature, at this stage, to put a  
10 mediator in place.

11 I'm also concerned, mediators can't deal, Mr.  
12 Herrmann, with 300,000 account holders. Ordinarily, a  
13 mediation is with a relatively limited number of represented  
14 parties. A free-for-all in mediation simply is not going to  
15 work. But I think there are too many issues that have to  
16 get addressed between now and the end of January, to make  
17 mediation meaningful.

18 I would say this, Mr. Herrmann, that if a decision  
19 is reached to push forward with mediation, yes, there will  
20 have to be discussion about the selection of a mediator, but  
21 I don't believe it's going to be a months-long process to  
22 get it in place and started.

23 So, I respect you for filing the motion. I think  
24 negotiated consensus is the best way to resolve the issues  
25 in this case. There are a lot of issues, as I said already,

1 that are already pending and awaiting decision by the Court,  
2 and more that are scheduled. So, that's how we're going to  
3 proceed with that. So, I don't want to hear anything more  
4 today on the mediation issues.

5 Let's go forward with the agenda. If we will, the  
6 next matter on the agenda is the Ernst & Young retention.  
7 Who is going to argue for the Debtor?

8 And here, I see, while the objection deadline had  
9 been pushed, there have been no objections filed. Mr.  
10 Koenig or whoever else is going to argue for the Debtor, if  
11 you could just update me on that.

12 MR. KOENIG: Thank you, Your Honor. Chris Koenig  
13 and Kirkland & Ellis for the Debtors. We're pleased to  
14 report that we worked out the issues with Ms. Cornell in her  
15 office. We filed a revised proposed order that reflects her  
16 input and her feedback. I believe we're resolved, but  
17 certainly, Ms. Cornell can speak for herself. I believe  
18 we're resolved on the Ernst & Young application.

19 THE COURT: All right, anybody else want to be  
20 heard? As I said, there were no objections that were filed.  
21 Ms. Cornell, do you want to be heard?

22 MS. CORNELL: For the record, Shara Cornell on  
23 behalf of the Office of the United States Trustee. I just  
24 want to say that, you know, both Kirkland and Ernst & Young,  
25 you know, we worked really diligently to get this across the

1 finish line, especially when dealing with an international  
2 firm. Sometimes, it can be difficult, so I just want to let  
3 the Court know that everyone really worked hard on this one.  
4 So, thank you.

5 THE COURT: All right. So, that's granted, the  
6 order can be entered. Next on the agenda is the retention  
7 of Gornitzky & Co., the Israeli counsel.

8 CLERK: Sorry, Judge. The order was entered this  
9 morning.

10 THE COURT: Okay, then we don't have to deal with  
11 that, okay. I do have -- Mr. Koenig -- thank you, Deanna.  
12 The Court is in receipt of the notice of filing of revised  
13 proposed order authorizing the Debtors to reopen withdrawals  
14 from certain customers with respect to certain assets held  
15 in the custody program and withhold accounts and granting  
16 related relief. So, the revised proposed order was filed  
17 yesterday as part of ECF 1755.

18 Mr. Koenig, could you address that, or one of your  
19 colleagues?

20 MR. KOENIG: Yeah, no, absolutely, Your Honor,  
21 thank you. So, we worked with the Committee and the two ad  
22 hoc groups following the hearing that we had on December 7  
23 in person before Your Honor, to revise the order per the  
24 Court's comments at the hearing. We've drafted the order to  
25 be responsive and flexible to however Your Honor rules, on

1 the issue of the custody wallets. And in brief, that's  
2 whether the 6 percent aggregate shortfall of what's actually  
3 in the custody wallet, matters for purposes of whether the  
4 custody assets are property of the estate or not.

5 We met and conferred with the other parties  
6 extensively, to try to reach a resolution of this issue.  
7 But given the differences in opinion on this issue between  
8 the parties, and the importance of distributions in this  
9 case, we were able to reach a consensual resolution. But  
10 the parties, of course, all committed to abide by whatever  
11 Your Honor rules on that issue. And the order is drafted in  
12 a flexible manner so that however Your Honor rules, we will  
13 abide by it, and the schedule that we file will take into  
14 account Your Honor's ruling.

15 THE COURT: Okay. So, my chambers received an  
16 email from a creditor, Chase Marsh. And I don't know  
17 whether your office received it as well or not. And it --  
18 I'll just read part of it: "I am an involuntary creditor  
19 in the subject Celsius case. Please forgive me for not  
20 knowing the exact protocols to submit this request, who to  
21 copy, or if my procedural understanding is not correct. And  
22 basically, it's asking more time to review the order, which  
23 was just filed yesterday, the revised order."

24 Did you receive the Chase Marsh email?

25 MR. KOENIG: Your Honor, I was copied on that

1 email late last night. Yes.

2 THE COURT: So, I don't know whether, is Mr. Marsh  
3 a custody or account holder who would receive a distribution  
4 under this order? Obviously, from the hearing, and what was  
5 what I indicated would happen, this would only resolve those  
6 against whom preference actions could not be brought,  
7 because they were below the threshold amount. And I don't  
8 know where Mr. Marsh is in this mix.

9 MR. KOENIG: No, that's right, Your Honor. We  
10 requested data from the company to confirm. And as of this  
11 morning, we hadn't received that back yet, so we were  
12 checking back. But I regret that I don't have the answer  
13 for Your Honor, just given the time.

14 THE COURT: All right, Mr. Marsh, you have your  
15 hand raised. I'll listen you now, please.

16 MR. MARSH: Hi, good morning, Judge Glenn. Chase  
17 Marsh, I'm a pro se creditor, as you read.

18 My concern that this was not properly docketed  
19 and, as Mr. Koenig had mentioned, there is a lot of sort of  
20 wiggle room within the redlines, that we have not had a  
21 chance to fully review. I am an earn customer and a custody  
22 customer. I would not be subject to the preference issues.

23 However, there are several other items that were  
24 introduced, such as paying gas fees, which were never part  
25 of the Debtors' program to begin with. In fact, their



1 stating was that, "Try us. If you don't like it, you can  
2 get your money off for free. We won't charge you." And  
3 now, if you're going to charge me gas fees, you got to go  
4 back and charge everyone else gas fees as well, that took  
5 their money off the platform.

6 So, I know that's a side issue, but there's a lot  
7 of side issues in these redlines that I hope can be  
8 considered in due course. That's all.

9 THE COURT: Thank you, Mr. Marsh. Mr. Koenig,  
10 could you -- I did see that in the revised order. It has  
11 provisions relating to -- gas was among them. And that was  
12 not discussed at the hearing.

13 MR. KOENIG: Yeah. Thank you, Your Honor. Again,  
14 Chris Koenig. So, that paragraph is paragraph 4 in the  
15 revised proposed order. So, gas fees are the transaction  
16 costs that are associated with transferring cryptocurrency.  
17 Mr. Marsh is right that prepetition in the ordinary course  
18 of business, the Debtors didn't charge gas fees. In the  
19 motion, and in the original version of the order, we did  
20 seek authority to charge gas fees.

21 The reason for that is we want to be as equitable  
22 as possible. Gas fees have to be paid. The question is,  
23 who pays for them? So, does the customer who is receiving  
24 cryptocurrency out of the estate, should they pay the  
25 transaction cost to return them the funds, the

1 cryptocurrency? Or should that cost be borne by the estate?  
2 Because if it's borne by the estate, effectively, that's  
3 less -- that's going to be less assets for the rest of the  
4 customers to receive from the Debtors' estates. And those  
5 customers aren't receiving anything.

6 So, what we thought was the most equitable thing  
7 to do, was to charge the gas fees against the customers that  
8 are actually receiving the distribution, as opposed to  
9 charging the customers that are not.

10 I'd submit that the changes in paragraph 4 are  
11 more clarifying in nature than a total shift of position.  
12 The motion was clear on this from day one.

13 THE COURT: Can you tell me; can you estimate the  
14 math? Because paragraph 4 talks about gas fees or  
15 transaction costs, or a fee approximating such cost.

16 MR. KOENIG: Yeah.

17 THE COURT: Is there an estimate of what those  
18 costs would be?

19 MR. KOENIG: Those costs are different on a coin-  
20 by-coin basis, Your Honor. Stable coins, for example, have  
21 a very low transaction cost. It's de minimis. It's  
22 probably a rounding error. There are other coins for which  
23 the gas fees are more significant, like bitcoin. But the  
24 gas fees, they actually vary over the course of the day.  
25 It's not like the fee is, you know, a certain percentage or

1 a certain dollar amount. It varies depending on the amount  
2 of transactions that are occurring on the network and so on  
3 and so forth.

4 You know, the fees are certainly very small  
5 compared to the distributions. Some of them are very de  
6 minimis, some of them are, you know, several percentage  
7 points to be sure. But I don't have a -- you know,  
8 summarizing all of the gas fees would be impossible in this  
9 setting, Your Honor.

10 THE COURT: Let me hear from counsel for custody  
11 and withhold, if they want to address what's in this revised  
12 proposed order.

13 MR. KOTLIAR: Good morning, Your Honor, Bryan  
14 Kotliar, of Togut, Segal & Segal, counsel for the ad hoc  
15 group of custodial account holders. Can Your Honor hear me  
16 okay?

17 THE COURT: Yes, I can, go ahead.

18 MR. KOTLIAR: So, we negotiated fairly extensively  
19 with the Debtors and the Creditors Committee and withhold on  
20 the form of this revised order. Obviously, there's one big  
21 change to it that we'd love to make so that it would apply  
22 to all custody assets. But we know that, as a result of the  
23 last hearing, that's not going to happen.

24 So, taking into account the realities of where we  
25 are in the case, it was really important to us to get an

1 order on file that got coins back to people as soon as  
2 possible. The gas fees were in the original proposed order  
3 with the motion. I don't think that it was described in the  
4 motion, but we understand, as Mr. Koenig explained, that gas  
5 fees are just a function of what happens when you transfer  
6 cryptocurrency. And I think we were happy enough to get our  
7 cryptocurrency assets back, if that was the case, that we  
8 were okay with the gas fees. We were okay with the  
9 explanation that Mr. Koenig gave about the language that was  
10 added about, or similar other transaction fees, because that  
11 to us was a change. But we became comfortable with it.

12 THE COURT: Could you give an estimate of what  
13 those fees would be?

14 MR. KOTLIAR: I don't know what the fees would be  
15 other than that they're often de minimis, but they vary on a  
16 case-by-case basis throughout the day.

17 THE COURT: All right. Thank you. Does counsel  
18 for the Withhold Ad Hoc Committee want to be heard.

19 MS. KOVSKY: Good morning, Your Honor, Deb Kovsky,  
20 for the Withhold Group. I'll just echo what Mr. Kotliar  
21 said. Unfortunately, the transaction fees have to come from  
22 somewhere, and imposing those fees as an additional cost on  
23 other customers didn't seem to be fair. So, we agreed that  
24 this was probably the most equitable outcome.

25 THE COURT: All right. I understand Mr. Marsh's

1 concern. This was included in the original motion, although  
2 not in -- it's been clarified in the order. I think it is  
3 extremely important, and I've thought so since day one, that  
4 every -- I'll say dollar, but value -- that can be returned  
5 to account holders sooner rather than later is important.  
6 The issue about who bears the cost of these transaction fees  
7 should the creditor body at large, who's not receiving  
8 anything, in effect, bear a part of that cost. I understand  
9 the argument why it should be those who are getting the  
10 funds back.

11 So, I'm going to approve the revised proposed  
12 order submitted in Word format, Mr. Koenig, and it will  
13 promptly be entered. Please, I would like to receive a  
14 status report when the distributions are made. You don't --  
15 well it should, there should be a report filed that  
16 indicates the creditor names, no other identifying  
17 information, but the creditor names and the amount or  
18 amounts that have been distributed to them after the  
19 distributions are made.

20 MR. KOENIG: Thank you, we'll be sure to do so.  
21 And just to provide an update for everybody listening and  
22 what the process will be like, this is in the order, but it  
23 contemplates that the Debtors and the committee and the ad  
24 hoc groups will come together on a schedule of the actual  
25 individuals and the coins to be distributed under the order.

1 We'll file that, we'll file that as soon as it's ready. Of  
2 course, we're waiting for Your Honor's decision on the  
3 custody wallets issue, but we're working on in it in the  
4 background around the clock so that we're ready, we're ready  
5 to file that schedule as promptly as possible and reopen  
6 withdrawals. And, of course, we'll file the reporting that  
7 Your Honor has asked for. Reopening withdrawals, people  
8 will be able to request withdrawals and that'll be an  
9 ongoing process. It's not as though the distributions will  
10 all be made on one day. It'll be, it'll be over time as  
11 people log into their app and give us their details and that  
12 the transactions are completed. But we're working closely  
13 with the committee and the ad hoc groups to make sure that  
14 folks get their coins back as soon as possible.

15 THE COURT: Thank you very much. All right  
16 there's a hand raised, Jason Lu.

17 MR. LU: I'm sorry, Your Honor. I couldn't lower  
18 my hand but to answer your question earlier about what the  
19 fees are like, just to give a bit of background, I ran a  
20 crypto currency trading firm, so I'm very familiar with  
21 this. And the good news is because cryptocurrency markets  
22 and interest is so depressed right now, gas is super, super  
23 cheap. As previously mentioned, Bitcoin is probably the  
24 most expensive one and over the last month, it's been about  
25 a dollar or two to send Bitcoins and that's irrespective of

1 the amount that's being sent.

2 THE COURT: Thank you very much. All right  
3 there's another hand, Ezra Serrur. I'm probably  
4 mispronouncing your last name. Go ahead.

5 MR. SERRUR: Hi, Your Honor. Just had a quick  
6 question. So as the distribution schedule is put together,  
7 if an individual creditor wants to, you know, make sure if  
8 they, if they're, if they're understanding is that they have  
9 a pure, you know, custody assets, if they want to, you know,  
10 confirm that they're included in the distribution schedule,  
11 who should they be communicating with?

12 THE COURT: Mr. Koenig, who should they  
13 communicate with?

14 MR. KOENIG: If they reach out to me and my email  
15 address is in the Debtor signature block. It's Chris Koenig  
16 at Kirkland.com, we'll get you to the right place. And  
17 we'll also, obviously, when we file the schedule, everybody  
18 will have the opportunity to look, find your name on the  
19 schedule, and reach out to us if you have any questions or  
20 concerns.

21 MR. SERRUR: Thank you.

22 THE COURT: All right. There's another hand  
23 raised. Jason Iovine, I'm probably mispronouncing it, but  
24 go ahead.

25 MR. IOVINE: Actually, pretty good. Jason Iovine,

1 creditor, question about the distribution. What is the  
2 determination about (indiscernible) that could have been  
3 accidentally sent in after the petition date?

4 THE COURT: I'm sorry. I don't follow your  
5 question.

6 MR. KOENIG: I do, Your Honor. Actually, yeah, I  
7 do.

8 THE COURT: Mr. Koenig, go ahead.

9 MR. KOENIG: So, Your Honor, in your post-  
10 petition, we become aware that there are certain customers  
11 that have erroneously or accidentally submitted  
12 cryptocurrency to the Debtors. Our view is that that  
13 property is not -- new transactions post-petition is not  
14 property of the Debtors' estate under Section 541 of the  
15 bankruptcy code, which is only that property and the  
16 Debtors' rights as of the petition date. So we are  
17 preparing a motion for authority to return any  
18 cryptocurrency that was erroneously, accidentally sent to us  
19 post-petition because we don't believe that it's property of  
20 the estate. And we believe that if it was not returned,  
21 creditors would likely have an administrative claim for the  
22 return of that property. So we're working to file that in  
23 the next week or so and we'll have that heard at the January  
24 24th hearing. But we understand the concern. We've  
25 received some inquiries about it from similarly situated



1 creditors and we're working to address it in the near term.

2 THE COURT: All right. Mr. Iovine, does that  
3 address your issue?

4 MR. IOVINE: Yes, sir, thank you.

5 THE COURT: Okay. All right, thank you. All  
6 right. Do we have anything else for today?

7 MR. KOENIG: Nothing from the Debtors, Your Honor.  
8 Thank you.

9 THE COURT: All right. Does anybody else wish to  
10 be heard? Mr. Iovine, your hand is still raised. I don't  
11 know whether you had something else you wanted to raise?

12 MR. IOVINE: Yes, Your Honor. I've been in  
13 contact with Gregory Pesce and the UST, Miss Shara Cornell.  
14 I sent some emails to them about some of the pro se  
15 creditors doxing other employees and former ambassadors,  
16 ambassadors who were volunteers to Celsius. And it has  
17 become a detriment to some of us. And we've gotten threats  
18 and no, I've got nothing, no reply other than Mr. Greg  
19 saying that he'll look into it. But nothing since then.

20 THE COURT: Let me just say the Court became aware  
21 yesterday that this is an issue. The Court has reached out  
22 to the Office of the United States Marshal. And I take  
23 these matters seriously. I have not seen anything in any  
24 court filings that seemed problematic. And everybody who  
25 has appeared at any of the hearings and spoken has been

1 quite respectful and I'm aware of that as well. So I guess  
2 what I would say is I'm aware that this has become an issue  
3 and I guess I would say is there's nothing I can do about it  
4 now other than that having become aware of it, I've tried to  
5 get the appropriate authorities to review what's been  
6 happening. It's it, it is to say the least unfortunate at a  
7 minimum. All right, Mr. Khanuja, again, I'm butchering  
8 names, I'm sure, but go ahead.

9 MR. KHANUJA: Thank you, Your Honor. Your Honor,  
10 I wanted to raise discussion to the Court as well as to the  
11 regulators because I apparently, I see a clear conflict of  
12 interest in the team who's organizing the bids and who are  
13 also responsible for making decisions around the bids as  
14 well. The team themselves, they were either, they're either  
15 representing or defending Celsius and Alex Mashinsky or they  
16 were hired by Alex Mashinsky. The motives and  
17 qualifications of some of these leading the bid or bid  
18 decisions is suspect as well. For example, K&E, they are  
19 representing and defending Celsius. Chris Ferraro was  
20 personally hired by Alex and was part of the problem that  
21 led to these cases. For example, as the head of FP&A, he  
22 should have identified the mismatch in Celsius assets and  
23 liabilities and monitored it far sooner and then taken  
24 actions against any further misrepresentation to the  
25 clients.

1 Most importantly, Chris Ferraro's declaration is  
2 counter to creditors claim around ownership of assets. So  
3 any solution he proposes will likely be bias towards Celsius  
4 and creditors may appeal against it. CCO, Mr. Blonstein, he  
5 admitted to having no response, doing no responsibility  
6 around consumer protection or even reviewing the policies  
7 which would typically fall under CCO.

8 For the reasons I list all of these, list above, a  
9 Celsius lead Newco should also be a complete no go. So any  
10 time and effort and money being spent on that, on Celsius  
11 led reorg, that should be a complete no go, saving the  
12 estate money.

13 And then finally, with regards to what K&E and  
14 Chris Ferraro mentioned around the progress they've made,  
15 there are so many important decisions still pending around  
16 ownership, the tax implications of Celsius claiming  
17 ownership of assets, and a bunch of other things. All of  
18 these have been pushed so many times. So in parallel, we  
19 understand they're saying the dual track. But the dual  
20 track is ineffective until a lot of these issues are  
21 resolved.

22 THE COURT: All right, thank you. Mr. Frishberg?

23 MR. FRISHBERG: Hi, thank you, Your Honor. Some  
24 of the threats were against me. I just wanted to provide a  
25 bit of context. I got an offer from some former Celsius

1 employees, some of which were former Celsius employees.  
2 They're part of the short squeeze, sell short squeeze group.  
3 They're effectively trying to manipulate the price of the  
4 cell token to short squeeze it. They offered me 150 percent  
5 of my claim if I accepted it on the condition that I would  
6 not appear in court or file any motions and I would leave my  
7 Twitter account. I refused and I start getting harassment.  
8 And the harassment started increasing. I found information  
9 on my family was posted publicly. Most all of the  
10 information posted publicly, was available about my family,  
11 was publicly available. Then Alex Mashinsky attacked me on  
12 Twitter saying that I'm hurting the Celsius community and  
13 its recovery, which increased the amount of threats and  
14 harassment. The one concerning the most was one that  
15 mentioned an unspecified somebody would drop into the bottom  
16 of the ocean like an anchor. Yeah, it's fairly concerning  
17 and there has been a lot of misinformation and harassment  
18 online towards creditors and pro ses especially. Thank you,  
19 Your Honor.

20 THE COURT: All right. Mr. Iovine.

21 MR. IOVINE: Mr. Frishberg statements were false.  
22 There was a claim by --

23 THE COURT: Stop, stop, stop. I'm not going to  
24 have a back and forth between creditors. If there's  
25 something you want to state about yourself, you can go ahead

1 and do that. But I'm not going to have this degenerate  
2 into, he said, he said, that sort of thing. Okay. Is there  
3 anything you wish to say for yourself?

4 MR. IOVINE: Yes. As one of the people offering  
5 to buy out his claim, that's what it was, a buyout.

6 THE COURT: Okay. Mr. Herrmann.

7 MR. HERRMANN: Yes, Your Honor, Immanuel Herrmann,  
8 pro se creditor. I just wanted to briefly comment on Mr.  
9 Ferraro's presentation today and just say --

10 THE COURT: Mr. Herrmann, we're past, we're past  
11 that. Ms. Cornell?

12 MS. CORNELL: Good morning. Again, it's Shara  
13 Cornell on behalf of the Office of the United States  
14 Trustee. I just wanted to respond very briefly to some of  
15 the comments from some of the pro se creditors this morning.  
16 And I just wanted to reiterate that if there are any  
17 concerning emails or threats that any creditor or employee  
18 are currently receiving or have received in connection with  
19 the Celsius bankruptcy case, that they are more than invited  
20 to please email or contact me. Our office takes these  
21 threats very seriously. We investigate all threats and  
22 although you may not receive an immediate response from me  
23 or from my office, please be sure that our office is in  
24 receipt and investigating these claims and take them  
25 seriously. Thank you very much.

1 THE COURT: Thank you, Ms. Cornell. I appreciate  
2 your having made that statement. It is of great concern to  
3 me. It doesn't involve a pending motion, but I've seen the  
4 flow of communications over the last few days. It is a  
5 great concern. As I say, my chambers and the Court have  
6 notified the US Marshals about it, but I appreciate your  
7 indicating that people should be in touch with you, okay?

8 MS. CORNELL: Absolutely. Thank you.

9 THE COURT: Thank you very much. All right, we're  
10 going to be adjourned for the day. Thank you very much.

11 MR. KOENIG: Thank you. Happy holidays, Your  
12 Honor.

13 THE COURT: Happy holidays, everybody.

14 (Whereupon these proceedings were concluded at  
15 11:13 AM)

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**I N D E X**

**RULINGS**

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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